IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Crl.Rev.Pet.No. 4050 of 2007()

CRA.180/2006 of ADDL.SESSIONS COURT-II, KOZHIKODE
ST.253/2003 of JUDL. MAGISTRATE OF FIRST CLASS-IV, KOZHIKODE

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REVN. PETITIONER: REVN. PETITIONER/APPELLANT/ACCUSED

K.AJITH, S/O. LATE DAMODARAN,
KALLARIKKAL JEWELLERY, M.M.ALI ROAD, KOZHIKODE.

BY ADV. SRI.V.V.SURENDRAN

RESPONDENTS: RESPONDENT/COMPLAINANT AND STATE

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1. P.JAYASANKAR, S/O. LATE BALAKRISHNAN MENON, RESIDING AT DOOR NO.3/1588, CHOYUNNI MASTER ROAD, MANKAVU P.O., KOZHIKODE.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR
SMT.T.KAMALA MENON

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 13/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 4050 OF 2007

Dated this the 13th day of November, 2007

O R D E R

In this revision filed under Section 397 read with Section 401 Cr.P.C. the petitioner who was the accused in S.T. No.253/2003 on the file of the J.F.C.M.-IV, Kozhikode challenges the conviction entered and the sentence passed against him for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the revision petitioner re-iterated the contentions in support of the revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the revision petitioner/accused failed to make the payment within 15 days of

receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the following further submissions:-

Eventhough Ext.P1 cheque for Rs.75,000/- is drawn on the Palayam Road Branch of the Union Bank of India and was presented through the Palayam Branch of the State Bank of India, Ext.P4 statutory notice had stated that Ext.P1 cheque was drawn on the State Bank of India and was presented through the Union Bank of India. The revision petitioner had in Ext.P5 reply notice denied the said statement in Ext.P4 statutory notice. He had specifically stated that he does not hold an account with the State Bank of India and that he has not issued a cheque as alleged by the complainant. On the contrary, he had given a signed blank cheque as security to oblige the complainant when the complainant availed a loan from the Bank.

5. It is true that Ext.P1 cheque is drawn on the Union Bank of India and it was presented by the complainant through the State Bank of India but by an accidental oversight in Ext.P4 lawyer notice the name of the drawee bank was wrongfully shown as the name of the collecting bank and the name of the collecting bank was wrongfully shown as the name of the drawee bank. Both the

courts below have held that the accused had not suffered any prejudice on account of the above mistake because he had no case that he had given more than one cheque to the complainant or that he is having any account with the State Bank of India. The accused had every opportunity to ascertain that the subject matter of Ext.P4 statutory notice was Ext.P1 cheque drawn on the Union Bank of India. No sort of prejudice or failure of justice has been suffered by the revision petitioner on account of the aforesaid mistake in the notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

6. What now survives for consideration is the question as to whether a proper sentence has been imposed on the revision petitioner. I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. Accordingly, the sentence imposed

by the courts below on the revision petitioner is set aside and instead he is sentenced to pay a fine of Rs.77,000/- (Rupees seventy seven thousand only) [giving credit to the sum of Rs.10,000/-(Rupees ten thousand only) deposited by the revision petitioner before the trial court pursuant to the orders of the first appellate court and which amount shall be permitted to be withdrawn by the 1st respondent complainant] within five months from today, failing which he shall suffer simple imprisonment for three months by way of default sentence. As and when the fine amount is deposited, the same shall be paid to the 1st respondent complainant by way of compensation under Section 357(1) Cr.P.C.

This revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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